

**CLARKSON LAW FIRM, P.C.**  
Ryan J. Clarkson (SBN 257074)  
*rclarkson@clarksonlawfirm.com*  
Shireen M. Clarkson (SBN 237882)  
*sclarkson@clarksonlawfirm.com*  
Katherine A. Bruce (SBN 288694)  
*kbruce@clarksonlawfirm.com*  
Kelsey J. Elling (SBN 337915)  
*kelling@clarksonlawfirm.com*  
22525 Pacific Coast Highway  
Malibu, CA 90265  
Tel: (213) 788-4050  
Fax: (213) 788-4070

*Attorneys for Plaintiff Michelle Moran*

**UNITED STATES DISTRICT COURT  
NORHTERN DISTRICT OF CALIFORNIA**

MICHELLE MORAN, individually and on  
behalf of all others similarly situated,

Plaintiff,

vs.

EDGEWELL PERSONAL CARE, LLC

Defendant.

Case No.:

**CLASS ACTION COMPLAINT**

1. Violation of Unfair Competition Law (Cal. Bus. & Prof. Code §§ 17200, *et seq.*)
2. Violation of False Advertising Law (Cal. Bus. & Prof. Code §§ 17500, *et seq.*)
3. Violation of Consumers Legal Remedies Act (Cal. Civ. Code §§ 1750, *et seq.*)
4. Breach of Warranty
5. Unjust Enrichment

**JURY TRIAL DEMANDED**

**TABLE OF CONTENTS**

	<b><u>Page No.</u></b>
COMPLAINT .....	1
JURISDICTION.....	4
VENUE .....	4
PARTIES .....	4
A.    Plaintiff .....	4
B.    Defendant.....	5
FACTUAL ALLEGATIONS.....	6
A.    Background .....	6
B.    The Products’ Misleading and Deceptive Labeling.....	9
C.    Plaintiff and Reasonable Consumers Were Misled by the Products.....	12
D.    The Products are Substantially Similar.....	13
E.    No Adequate Remedy at Law .....	14
CLASS ACTION ALLEGATIONS .....	17
COUNT ONE.....	20
Violation of California Unfair Competition Law	
(Cal. Bus. & Prof. Code §§ 17200, <i>et seq.</i> )	
A.    “Unfair” Prong.....	23
B.    “Fraudulent” Prong .....	25
C.    “Unlawful” Prong .....	26
COUNT TWO.....	27
Violation of California False Advertising Law	
(Cal. Bus. & Prof. Code §§ 17500, <i>et seq.</i> )	
COUNT THREE .....	29
Violation of California Consumers Legal Remedies Act	
(Cal. Civ. Code §§ 1750, <i>et seq.</i> )	

1	COUNT FOUR .....	32
2	Breach of Warranty	
3	COUNT FIVE .....	33
4	Unjust Enrichment/Restitution	
5	PRAYER FOR RELIEF .....	35
6	DEMAND FOR JURY TRIAL .....	37

CLARKSON LAW FIRM, P.C.  
22525 Pacific Coast Highway  
Malibu, CA 90265

COMPLAINT

1  
2 1. Plaintiff Michelle Moran (“**Plaintiff**”), individually and on behalf of all others  
3 similarly situated, as more fully described herein (the “**Class**” and “**Class Members**”), brings this  
4 class action complaint against Defendant Edgewell Personal Care Brands, LLC (“**Defendant**”), and  
5 alleges the following upon information and belief, unless otherwise expressly stated as based upon  
6 personal knowledge:

7 2. **Synopsis.** To obtain an unfair competitive advantage in the billion-dollar sunscreen  
8 market, Defendant is exposing consumers and the environment (*e.g.* coral reefs and marine life) to  
9 harmful chemical active ingredients in their sunscreens by falsely labeling them as “REEF  
10 FRIENDLY.” Defendant has reaped millions of dollars through this fraudulent scheme based on a  
11 calculated business decision to put profits over people and the environment. Specifically, Defendant  
12 falsely and misleadingly labels certain of its Banana Boat® brand sunscreen products as “REEF  
13 FRIENDLY” (hereinafter, “**Reef Friendly Representation**,” “**False Advertising Claim**” and/or  
14 “**Challenged Representation**”). An example of the Challenged Representation is depicted on the  
15 following page:

16 ///

17 ///

18 ///

19 ///

20 ///

21 ///

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

CLARKSON LAW FIRM, P.C.  
22525 Pacific Coast Highway  
Malibu, CA 90265



3. The Challenged Representation has misled reasonable consumers, including Plaintiff, into believing that the Products only contain reef friendly ingredients, in that they only include ingredients that do not cause harm to and/or kill coral reefs. However, contrary to this labeling, the Products actually contain avobenzone, homoslate, and/or octocrylene, which are chemicals that can harm and/or kill coral reefs. Through falsely, misleadingly, and deceptively labeling the Products, Defendant sought to take advantage of consumers' desire for sunscreens that are safe for coral reefs and/or the marine life and related ecosystems that depend on them, while reaping the financial benefits of using less desirable, harmful, and less costly chemicals in the Products. Defendant has done so at the expense of unwitting consumers, as well as Defendant's lawfully acting competitors, over whom Defendant maintains an unfair competitive advantage.

4. **The Products.** The products at issue are Banana Boat® brand sunscreens and sun-blocks manufactured and/or marketed by Defendant that contain the Challenged Representation on the labels and/or packaging, in all sizes, forms of topical application (stick, paste, lotion, cream, spray, or mist), and SPF's, which include, but are not necessarily limited to:

- (1) Banana Boat Sport Ultra Sunscreen Lotion (including SPF 15, 30, and 50+, and the 1-, 2-, 3-, 8-, and 12-oz. sizes) (*see Exhibit 1A-G* [Product Images]);
- (2) Banana Boat Sport Ultra Sunscreen Spray (including SPF 15, 30, 50+, and the 6- and 12-oz sizes) (*see Exhibit 1H-L* [Product Images]);
- (3) Banana Boat Sport Ultra Sunscreen Stick (including SPF 50+ and 1.5-oz sizes) (*see Exhibit 1M* [Product Images]);
- (4) Banana Boat Sport Ultra Sunscreen Lotion (Faces) (including SPF 30 and 3-oz sizes) (*see Exhibit 1N* [Product Images]); and
- (5) Banana Boat Sport Coolzone Sunscreen Spray (including SPF 30, 50+ and 1.8-, 6-, and 12-oz sizes) (*see Exhibit 1O-R* [Product Images]) (collectively, the "**Products**").

5. **Primary Objectives.** Plaintiff brings this action individually and on behalf of those similarly situated to represent a National Class and a California Subclass of consumers who purchased the Products (defined *infra*). Plaintiff seeks a monetary recovery of the Products'

1 purchase price and Defendant's ill-gotten gains, as consistent with permissible law (including, for  
 2 example, damages, restitution, disgorgement, and any applicable penalties/punitive damages).  
 3 Plaintiff further seeks injunctive relief to stop Defendant's unlawful labeling and advertising of the  
 4 Products and to dispel the public's misconception caused by the Challenged Representation, by  
 5 enjoining Defendant's unlawful advertising practices for the benefit of consumers, including the  
 6 Class.

### 7 JURISDICTION

8 6. This Court has original jurisdiction over this action pursuant to the Class Action  
 9 Fairness Act of 2005, 28 U.S.C. § 1332(d), because the proposed Class consists of 100 or more  
 10 members; the amount in controversy exceeds \$5,000,000, exclusive of costs and interest; and  
 11 minimal diversity exists. This Court also has supplemental jurisdiction over the state law claims  
 12 pursuant to 28 U.S.C. § 1367.

### 13 VENUE

14 7. Venue is proper in this District under 28 U.S.C. § 1391 because a substantial part of  
 15 the events and omissions giving rise to Plaintiff's claims occurred in this District. In addition,  
 16 Plaintiff purchased the unlawful Products in this District, and Defendants have marketed,  
 17 advertised, and sold the Products within this District.

### 18 PARTIES

#### 19 **A. Plaintiff**

20 8. **Plaintiff Michelle Moran.** The following is alleged based upon personal knowledge:  
 21 (1) Plaintiff is a resident of San Francisco, California. (2) Plaintiff purchased the Banana Boat Sport  
 22 Ultra Lotion Sunscreen SPF 30 for approximately \$9.90 at a CVS Store in San Francisco, California  
 23 in the summer of 2021. (3) In making the purchase, Plaintiff relied on the Reef Friendly  
 24 Representation on the Product's label. (4) At the time of purchase, Plaintiff did not know that this  
 25 Representation was false, and she believed she was purchasing a sunscreen product that was safe  
 26 for coral reefs in that they did not contain ingredients that can harm coral reefs. (5) Plaintiff would  
 27 not have purchased the Product had she known that the Challenged Representation was false and  
 28 that the Product contained ingredients harmful to coral reefs. (6) Plaintiff continues to see the

1 Products available for purchase and desires to purchase them again if the Reef Friendly  
2 Representation were in fact true. (7) Plaintiff is not personally familiar with ingredients in the  
3 Products and does not possess any specialized knowledge, skill, experience, or education in  
4 sunscreens, sunscreen ingredients, marine life pollutants, or chemicals hazardous coral reefs and,  
5 therefore, Plaintiff has no way of determining whether the Challenged Representation on the  
6 Products is true. (8) Plaintiff is, and continues to be, unable to rely on the truth of the Reef Friendly  
7 Representation on the Products' labels.

8 9. **Plaintiff's Future Harm.** If the Products indeed contained only ingredients that were  
9 actually "Reef Friendly" as labeled and advertised, Plaintiff would purchase the Products again in  
10 the future, despite the fact that the Products were once marred by false advertising or labeling.  
11 Therefore, Plaintiff would reasonably, but incorrectly, assume the Products were improved. In that  
12 regard, Plaintiff is an average consumer who is not sophisticated in marine toxicology or sunscreen  
13 formulation and does not know the meaning or the import of the Products chemical ingredients.  
14 Accordingly, Plaintiff is at risk of reasonably, but incorrectly, assuming that Defendant fixed the  
15 formulation of the Products such that Plaintiff may buy them again, believing they were no longer  
16 falsely advertised and labeled.

17 **B. Defendant**

18 10. **Defendant Edgewell Personal Care LLC ("Edgewell")** is a limited liability  
19 company headquartered in Connecticut, with its primary place of business in Shelton, Connecticut,  
20 and was doing business in the state of California during all relevant times. Directly and through its  
21 agents, Defendant Edgewell has substantial contacts with and receives substantial benefits and  
22 income from and through the State of California. Defendant Edgewell is one of the owners,  
23 manufacturers, and/or distributors of the Products, and is one of the companies that created and/or  
24 authorized the false, misleading, and deceptive labeling of the Products. Defendant Edgewell and  
25 its agents promoted, marketed and sold the Products at issue in this jurisdiction and in this judicial  
26 district. The unfair, unlawful, deceptive, and misleading False Advertising Claims on the Products  
27 were prepared, authorized, ratified, and/or approved by Defendant Edgewell and its agents, and  
28 were disseminated throughout California and the nation by Defendant Edgewell and its agents to



deceive and mislead consumers into purchasing the Products.

## **FACTUAL ALLEGATIONS**

### **A. Background**

11. **Background.** Coral reefs are some of the most diverse ecosystems in the world. Coral reefs protect coastlines from storms and erosion, provide jobs for local communities, and offer opportunities for recreation.<sup>1</sup> Over half a billion people depend on reefs for food, income, and protection.<sup>2</sup> Additionally, coral reef ecosystems are culturally important to people around the world.<sup>3</sup> Indeed, the world's largest coral reef is considered to be one of the great seven natural wonders of the world due to its scale, beauty, and biodiversity.<sup>4</sup> Despite their ecological and cultural importance, coral reefs are disappearing at alarming rates.<sup>5</sup> In fact, some scientists predict that if current trends continue, nearly all coral reefs will disappear over the next twenty to fifty years.<sup>6</sup> In recent years, consumers have become increasingly concerned about protecting coral reefs through individual action, including purchasing reef friendly sunscreen, which is free from chemicals known to harm and kill coral reefs. Thus, "Reef Friendly" sunscreens are rapidly increasing in popularity due to their perceived positive ecological impact.<sup>7</sup>

12. **Harmful Chemicals.** Avobenzone, homosalate, and octocrylene (collectively, "**Harmful Ingredients**") are chemicals that can harm and/or kill coral reefs.

13. **The HEL—Octocrylene.** The Haerecticus Environmental Laboratory ("**HEL**") is a nonprofit organization that specializes in research and advocacy in a number of areas including

<sup>1</sup> "Coral Reef Ecosystems," National Oceanic and Atmospheric Administration, <https://www.noaa.gov/education/resource-collections/marine-life/coral-reef-ecosystems> (accessed September 29, 2021).

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*; "Great Barrier Reef," WWF [World Wildlife Fund], <https://www.wwf.org.au/what-we-do/oceans/great-barrier-reef#gs.b5pmtu> (accessed Sept. 29, 2021).

<sup>5</sup> *Id.*

<sup>6</sup> "Nearly All Coral Reefs Will Disappear Over the Next 20 Years, Scientists Say," Forbes (2020), <https://www.forbes.com/sites/trevornace/2020/02/24/70-90-percent-of-coral-reefs-will-disappear-over-the-next-20-years-scientists-say/?sh=70e461da7d87> (accessed Sept. 29, 2021).

<sup>7</sup> "Reef Safe Sunscreen Guide," Save the Reef, <https://savethereef.org/about-reef-save-sunscreen.html> (last accessed Sept. 29, 2021); "9 Reasons Why You Should Switch to a Reef Safe Sunscreen," Elle.com, <https://www.elle.com/beauty/makeup-skin-care/g32685164/best-reef-safe-sunscreen/> (accessed Sept. 29, 2021); "How to Know if Your Sunscreen is Killing Coral Reefs – and the Brands to Try Instead," Travel and Leisure, <https://www.travelandleisure.com/style/beauty/reef-safe-sunscreen> (accessed Sept. 29, 2021).

1 sunscreens and how their ingredients impact natural environmental habitats. Regarding certain  
2 harmful ingredients used in sunscreens, the HEL reports that octocrylene is a chemical that causes  
3 harm and/or can kill coral reefs and pose a substantial threat to ecosystem health.<sup>8</sup>

4 14. **The NOS—Octocrylene.** The National Ocean Service (“NOS”) also advocates  
5 against the use of certain chemicals, including octocrylene, in the use of sunscreen because of the  
6 severe negative impact that is has on coral reefs.<sup>9</sup> The NOS classifies octocrylene as a threat to coral  
7 reefs, as well as marine ecosystems.<sup>10</sup>

8 15. **The Hawaii Center for Biological Diversity (the “Center”)—Octocrylene &**  
9 **Avobenzone.** The Center is petitioning the FDA for a national ban on chemicals, like octocrylene  
10 and avobenzone, in sunscreens that harm and kill the coral reefs.<sup>11</sup> The center is also advocating for  
11 a statewide ban of octocrylene and avobenzone in sunscreens, noting the toxic impacts these  
12 chemicals have on the coral reefs and marine life.<sup>12</sup>

13 16. **FDA Petition—Octocrylene.** In fact, a larger group of researchers have also  
14 petitioned the FDA to remove from sale all sunscreens that contain octocrylene.<sup>13</sup> Because products  
15 made with octocrylene may contain benzophenone, a known carcinogen, and is considered to be an  
16 endocrine, metabolic, and reproductive disruptor.<sup>14</sup>

17 17. **Hawaii Legislature—Octocrylene & Avobenzone.** In 2018, state lawmakers  
18 banned oxybenzone and octinoxate from being included as ingredients in sunscreens sold in Hawaii  
19 because of their deleterious impact on coral reefs and dependent marine life. In 2021, state  
20 lawmakers amended the bill to also ban the sale of sunscreens that contain avobenzone and  
21

22 <sup>8</sup> “Protect Land + Sea Certification,” Haereticus Environmental Laboratory, <http://haereticus-lab.org/protect-land-sea-certification-3/> (accessed Sept. 29, 2021).

23 <sup>9</sup> “Skincare Chemicals and Coral Reefs,” National Oceanic and Atmospheric Administration,  
24 <https://oceanservice.noaa.gov/news/sunscreen-corals.html> (accessed Sept. 29, 2021).

25 <sup>10</sup> *Id.*

26 <sup>11</sup> “Hawai’i Senate Bill Bans Harmful Sunscreen Chemicals” Center for Biological Diversity  
(March 9, 2021), <https://biologicaldiversity.org/w/news/press-releases/hawaii-senate-bill-bans-harmful-sunscreen-chemicals-2021-03-09/> (accessed Sept. 29, 2021).

27 <sup>12</sup> *Id.*

28 <sup>13</sup> Popular sunscreens under scrutiny as scientists cite another potential carcinogen, Los Angeles Times (Aug. 10, 2021), <https://www.latimes.com/business/story/2021-08-10/sunscreen-fda-carcinogen-benzophenone-octocrylene-concerns> (accessed Sept. 29, 2021).

<sup>14</sup> *Id.*

1 octocrylene starting in 2023.<sup>15</sup> Octocrylene was banned because it can disrupt human hormones and  
 2 has a toxic impact on aquatic ecosystems, including coral reefs.<sup>16</sup> Avobenzone was banned because  
 3 it is “an endocrine disruptor and can reduce coral resilience against the high ocean temperatures that  
 4 are killing corals worldwide.”<sup>17</sup>

5 18. **International Bans—Octocrylene & Homosalate.** In June 2019, the US Virgin  
 6 Islands banned sunscreens containing octocrylene, oxybenzone, and octinoxate, with the ban  
 7 effective beginning March 2020.<sup>18</sup> In addition, Palau, Bonaire, and the nature reserve areas in  
 8 Mexico have approved legislation for similar bans, and a similar ban is being discussed in Brazil  
 9 and the EU.<sup>19</sup> Furthermore, the European Commission has recently recommended that homosalate  
 10 was not safe to use at certain concentrations and should have a maximum concentration of 1.4  
 11 percent.<sup>20</sup> Scientists in the United States have likewise raised concerns about the toxic nature of  
 12 these ingredients, as well as homoslate, and believe they also have a harmful impact on reefs.<sup>21</sup>

13 <sup>15</sup> “Hawaii Senate Bill 132,” Hawaii State Legislature,  
 14 [https://www.capitol.hawaii.gov/measure\\_indiv.aspx?billtype=SB&billnumber=132&year=2021](https://www.capitol.hawaii.gov/measure_indiv.aspx?billtype=SB&billnumber=132&year=2021) (a  
 15 ccessed on Sept. 29, 2021).

16 <sup>16</sup> “Bill would prohibit sale of sunscreen products containing avobenzone and octocrylene,” West  
 17 Hawaii Today (March 10, 2021), [https://www.westhawaii.com/2021/03/10/hawaii-news/bill-  
 18 would-prohibit-sale-of-sunscreen-products-containing-avobenzone-and-octocrylene/](https://www.westhawaii.com/2021/03/10/hawaii-news/bill-would-prohibit-sale-of-sunscreen-products-containing-avobenzone-and-octocrylene/) (accessed  
 19 Sept. 29, 2021).

20 <sup>17</sup> *Id.*

21 <sup>18</sup> Narla, et. al., “Sunscreen: FDA regulation, and environmental and health impact,” Royal Society  
 22 of Chemistry (Nov. 22, 2019), <https://pubs.rsc.org/en/content/articlehtml/2019/pp/c9pp00366e>  
 23 (accessed on Sept. 29, 2021).

24 <sup>19</sup> *Id.*

25 <sup>20</sup> “The Trouble with Ingredients In Sunscreen,” Environmental Working Group,  
 26 <https://www.ewg.org/sunscreen/report/the-trouble-with-sunscreen-chemicals/> (accessed on Sept.  
 27 29, 2021).

28 <sup>21</sup> Yang, Changwon, et al. “Homosalate Aggravates the Invasion of Human Trophoblast Cells as  
 Well as Regulates Intracellular Signaling Pathways Including PI3K/AKT and MAPK Pathways,”  
 243 Environmental Pollution 1263-73 (Dec. 2018), <https://europepmc.org/article/med/30267922>  
 (accessed Sept. 29, 2021); Park, Chang-Beom, et al. “Single- and Mixture Toxicity of Three Organic  
 UV-Filters, Ethylhexyl Methoxycinnamate, Octocrylene, and Avobenzone on Daphnia Magna.”  
 137 Ecotoxicology and Environmental Safety 57-63 (Mar. 2017),  
[https://www.researchgate.net/publication/311425878\\_Single-  
 and\\_mixture\\_toxicity\\_of\\_three\\_organic\\_UV-  
 filters\\_ethylhexyl\\_methoxycinnamate\\_octocrylene\\_and\\_avobenzone\\_on\\_Daphnia\\_magna](https://www.researchgate.net/publication/311425878_Single-and_mixture_toxicity_of_three_organic_UV-filters_ethylhexyl_methoxycinnamate_octocrylene_and_avobenzone_on_Daphnia_magna)  
 (accessed Sept. 29, 2021); McCoshum, Shaun M., et al. “Direct and Indirect Effects of Sunscreen  
 Exposure for Reef Biota,” 776 Hydrobiologia 139-46 (Issue no. 1, Aug. 2016),  
[https://www.researchgate.net/publication/299423358\\_Direct\\_and\\_indirect\\_effects\\_of\\_sunscreen\\_  
 exposure\\_for\\_reef\\_biota](https://www.researchgate.net/publication/299423358_Direct_and_indirect_effects_of_sunscreen_exposure_for_reef_biota) (accessed Sept. 29, 2021); Slijkerman, D. M. E., and M. Keur, “Sunscreen  
 Ecoproducts: Product Claims, Potential Effects and Environmental Risks of Applied UV Filters,”  
 Wageningen Marine Research (2018), [https://research.wur.nl/en/publications/sunscreen-  
 ecoproducts-product-claims-potential-effects-and-enviro](https://research.wur.nl/en/publications/sunscreen-ecoproducts-product-claims-potential-effects-and-enviro) (accessed Sept. 29, 2021).

19. **Consumers’ Desire for “Reef Friendly” Sunscreens.** Consequently, because of the ecological concerns about these harmful chemicals, consumers have increasingly sought out sunscreens that contain only ingredients that are safe for coral reefs. As a result, sales of “Reef Friendly” sunscreens have surged in recent years.

**B. The Products’ Misleading and Deceptive Labeling**

20. **Products.** As described *supra*, Defendant manufactures, markets, advertises, labels, packages, and sells the Products—Banana Boat® Sport Ultra, Sport Ultra Faces, and Sport Coolzone Sunscreens in various topical applications (lotion, spray, stick), SPFs (15, 30, and 50+), and sizes (ranging from 1-oz to 12-oz).

21. **Challenged Representations on Products’ Front Labels.** Also as described *supra*, Defendant falsely and misleadingly labels the Products with the Reef Friendly Representation. The Reef Friendly Representation is found on a blue-green or teal, circular image on each Product’s front display panel of the label or packaging. *See Exhibit 1* [Product Images]. In the center of the circular image, it depicts a coral reef. *Id.* Along the top edge of the circular image, in prominent all-capitals typeface and thick lettering that starkly contrasts with the orange, yellow, and dark navy- or royal-blue background, it states: “REEF FRIENDLY.” *Id.* Defendant reinforces and emphasizes the Reef Friendly Representation on each Product with both the picture of a coral reef and its blue-green or teal coloring that stands out in comparison to the rest of the label to draw the attention of consumers to this False Advertising Claim. *Id.* The placement of the Challenged Representations on the primary display panel of the front labels, as well as the emphasis and deliberate conspicuousness of the Challenged Representations, demonstrate the Defendant’s awareness of the materiality of these representations, that consumers prefer and are motivated to buy sunscreens that are safe for coral reefs and the environment, that the Products contain Harmful Ingredients, and therefore the Reef Friendly Representations are likely to mislead the reasonable consumer into buying the Products because they believe the Products do not contain ingredients that can harm coral reefs.

22. **Consumers’ Reasonably Rely on the Challenged Representation.** Based on the Challenged Representation, reasonable consumers believe that the Products are safe for coral reefs.

Put differently, reasonable consumers believe the Products do not contain *any* ingredients that can cause harm to and/or kill coral reefs.

23. **Harmful Chemicals Contained in the Products.** However, in spite of their labeling, the Products contain Harmful Ingredients, including avobenzone, homosalate, and octocrylene, all chemicals that cause harm to and/or kill coral reefs. As summarized below, the Products contain the following Harmful Ingredients:

**Exhibit 1A: Banana Boat Sport Ultra Sunscreen Lotion SPF 15**

- Avobenzone: 2 %
- Homosalate: 6 %
- Octocrylene: 3 %

**Exhibit 1B-D: Banana Boat Sport Ultra Sunscreen Lotion SPF 30**

- Avobenzone: 2.7 %
- Homosalate: 6 %
- Octocrylene: 4.5 %

**Exhibit 1E-G: Banana Boat Sport Ultra Sunscreen Lotion SPF 50**

- Avobenzone: 2.7 %
- Homosalate: 9 %
- Octocrylene: 6.5 %

**Exhibit 1H: Banana Boat Sport Ultra Spray Sunscreen SPF 15**

- Avobenzone: 1.6 %
- Homosalate: 4 %
- Octocrylene: 4.5 %

**Exhibit 1I-J: Banana Boat Sport Ultra Spray Sunscreen SPF 30**

- Avobenzone: 2 %
- Homosalate: 6 %
- Octocrylene: 6 %

**Exhibit 1K-L: Banana Boat Sport Ultra Spray Sunscreen SPF 50**

- Avobenzone: 2.7 %
- Homosalate: 9 %
- Octocrylene: 6 %

**Exhibit 1M: Banana Boat Sport Ultra Sunscreen Stick SPF 50**

- Avobenzone: 2.7 %
- Homosalate: 9 %
- Octocrylene: 9 %

**Exhibit 1N: Banana Boat Sport Ultra Sunscreen Lotion (Faces) SPF 30**

- Avobenzone: 2.7 %
- Homosalate: 6 %
- Octocrylene: 4.5 %

**Exhibit 1O-P: Banana Boat Sport Spray Sunscreen (Cool Zone) SPF 30**

- Avobenzone: 2 %
- Homosalate: 6 %

- Octocrylene: 4.5 %

**Exhibit 1Q-R: Banana Boat Sport Spray Sunscreen (Cool Zone) SPF 50**

- Avobenzone: 2.7 %
- Homosalate: 9 %
- Octocrylene: 7 %

24. **Avobenzone.** Avobenzone is typically used in the place of oxybenzone, another harmful chemical ingredient. When avobenzone is exposed to ultraviolet light the compound degrades and causes damage to coral reefs and aquatic life.<sup>22</sup>

25. **Octocrylene.** Octocrylene produces benzophenone, which is a mutagen, carcinogen, and endocrine disruptor.<sup>23</sup> It is associated with a wide range of toxicities, including genotoxicity, carcinogenicity, and endocrine disruption. Octocrylene has been shown to accumulate in various types of aquatic life and cause DNA damage, developmental abnormalities, and adverse reproductive effects.<sup>24</sup> Bioaccumulation of this chemical leads to endocrine disruption, alteration of gene transcription, and developmental toxicity in fish, dolphins, sea urchins, and other marine life.<sup>25</sup> In addition, octocrylene adversely impacts coral reefs, even at low concentrations, by accumulating in coral tissue and triggering mitochondrial dysfunction.<sup>26</sup>

<sup>22</sup> Ruszkiewicz, Joanna, et al. "Neurotoxic effect of active ingredients in sunscreen products, a contemporary review," *PMC*, doi: 10.1016/j.toxrep.2017.05, May 2017, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5615097/#bib0635> (last accessed Sept. 29, 2021).

<sup>23</sup>"Octocrylene" *Environmental Working Group*, [https://www.ewg.org/skindeep/ingredients/704206-OCTOCRYLENE\\_](https://www.ewg.org/skindeep/ingredients/704206-OCTOCRYLENE_)(last accessed on Sept. 29, 2021).

<sup>24</sup> Gago-Ferrero, Pablo, et al. "First Determination of UV Filters in Marine Mammals. Octocrylene Levels in Franciscana Dolphins," *Environmental Science & Technology*, vol. 47, no. 11, American Chemical Society, June 2013, pp. 5619–25, doi:10.1021/es400675y (last accessed Sept. 29, 2021); Zhang, Qiuya Y., et al. "Assessment of Multiple Hormone Activities of a UV-Filter (Octocrylene) in Zebrafish (Danio Rerio)," *Chemosphere*, vol. 159, Sept. 2016, pp. 433–41, *ScienceDirect*, doi:10.1016/j.chemosphere.2016.06.037 (last accessed Sept. 29, 2021).

<sup>25</sup> Blüthgen, Nancy, et al. "Accumulation and Effects of the UV-Filter Octocrylene in Adult and Embryonic Zebrafish (Danio Rerio)," *The Science of the Total Environment*, vol. 476–477, Apr. 2014, pp. 207–17, *PubMed*, doi:10.1016/j.scitotenv.2014.01.015 (last accessed Sept. 29, 2021).

<sup>26</sup> Stien, Didier, et al. "Metabolomics Reveal That Octocrylene Accumulates in *Pocillopora damicornis* Tissues as Fatty Acid Conjugates and Triggers Coral Cell Mitochondrial Dysfunction," *Analytical Chemistry*, vol. 91, no. 1, Jan. 2019, pp. 990–95, *DOI.org (Crossref)*, doi:10.1021/acs.analchem.8b04187 (last accessed Sept. 29, 2021).



26. **Homosalate.** Homosalate also has harmful effects similar to octocrylene. Homosalate impacts the bodies hormone system, particularly the estrogen system. This hormone disruption, as well as pesticide disruption, are also cause harm to the coral reefs and aquatic organisms.<sup>27</sup>

27. **True Reef Friendly Sunscreens.** True Reef Friendly sunscreens do not contain *any* harmful chemical ingredients. Many environmental organizations have favored mineral active ingredients that provide sun protection, such as zinc oxide and titanium dioxide, because they have not been determined unsafe for people, the environment, or aquatic life, like coral reefs. However, mineral active ingredients, in comparison to chemical active ingredients, are more expensive, which in turn increases production costs and decreases a manufacturer's profit margins. In this way, manufacturers, such as Defendant, "greenwash" their sunscreens by labeling them with environmentally friendly claims, such as the Reef Friendly Representations, to charge consumers with a premium for "reef friendly" sunscreens, gain an unfair advantage over their competitors, and defraud consumers into buying the Products even though they contain Harmful Ingredients that can harm or kill coral reefs.

### C. Plaintiff and Reasonable Consumers Were Misled by the Products

28. **Misrepresentations.** Labeling the Products with the Reef Friendly Representation when they contain Harmful Ingredients that are known to harm and/or kill coral reefs is wholly misleading and deceptive.

29. **Material.** The Reef Friendly Representation was and is material to reasonable consumers, including Plaintiff, in making the decision to purchase the Products.

30. **Reliance.** Plaintiff and reasonable consumers relied on the Reef Friendly Representation in deciding to purchase the Products.

31. **Consumers Lack Knowledge of Falsity.** At the time Plaintiff purchased the Products, Plaintiff did not know, and had no reason to know, that the Products' labeling and advertising were false, misleading, deceptive, and unlawful as set forth herein.

---

<sup>27</sup> "EWG's Sunscreen Guide," EWG, <https://www.ewg.org/sunscreen/report/executive-summary/> (last accessed Sept. 29, 2021); "Homosalate," Campaign for Safe Cosmetics, <https://www.safecosmetics.org/get-the-facts/chemicals-of-concern/homosalate/> (last accessed Sept. 29, 2021).

32. **Misrepresentation/Omission.** The Reef Friendly Representation materially misrepresented that the Products contain only ingredients that are safe for coral reefs, when the Products actually contain Harmful Ingredients that are not safe for coral reefs.

33. **Defendants' Knowledge.** Defendants knew, or should have known, that the Reef Friendly Representation was false, misleading, deceptive, and unlawful, at the time that it advertised the Products using the Reef Friendly Representations, and Defendants intentionally and deliberately used the Reef Friendly Representations on the Products' labeling, packaging, and advertising to cause Plaintiff and similarly situated consumers to believe that the Products are safe for coral reefs and buy them.

34. **Detriment.** Plaintiff and similarly situated consumers would not have purchased the Products, or would not have purchased the Products for as great a price, if they had known the truth about the Reef Friendly Representations. Accordingly, based on Defendants' material misrepresentations and omissions, reasonable consumers, including Plaintiff, purchased the Products to their detriment.

**D. The Products are Substantially Similar**

35. As described herein, Plaintiff purchased the Banana Boat Sport Ultra Sunscreen Lotion SPF 30 ("**Purchased Product**"). The additional products identified above in paragraph 4 ["The Products"] (collectively, the "**Unpurchased Products**") are substantially similar to the Purchased Product.

- a. **Defendant.** All Products are manufactured, sold, marketed, advertised, labeled, and packaged by Defendant.
- b. **Brand.** All Products are sold under the Banana Boat trademarked brand name.
- c. **Product Line.** All Products are sold under Banana Boat's product line called "Sport."
- d. **Marketing Demographics.** All Products are marketed directly to consumers for personal use.
- e. **Purpose.** All Products are sunscreens.
- f. **Application.** All Products are applied in the same manner—directly onto the skin.



- 1 g. **Misrepresentations.** All Products contain the same Reef Friendly  
 2 Representation. In addition, all Products prominently display the exact same Reef  
 3 Friendly Representation on the front primary display panel of the label, in the  
 4 same boldly contrasting color typeface, in a blue-green or teal font set against an  
 5 orange, yellow, and navy- or royal-blue background, and include an image of a  
 6 coral reef.
- 7 h. **Packaging.** All Products are packaged in similar packaging using a similar color  
 8 scheme.
- 9 i. **Other Representations.** All Products contain substantially the same additional  
 10 claims on the Products' packaging and labeling, including the same representation  
 11 regarding "Water Resistant (80 minutes)," and "UVA/UVB Protection," "No  
 12 Oxybenzone or Octinoxate."
- 13 j. **Key Ingredients.** All Products contain the same Harmful Ingredients (namely,  
 14 octocrylene, avobenzone, and homosalate).
- 15 k. **Misleading Effect.** The misleading effect of the Products' labels on consumers  
 16 is the same for all Products—consumers pay for sunscreens that are safe for coral  
 17 reefs but receive sunscreens that are not safe.

18 **E. No Adequate Remedy at Law**

19 36. **No Adequate Remedy at Law.** Plaintiff and members of the Class are entitled to  
 20 equitable relief as no adequate remedy at law exists.

- 21 a. **Broader Statutes of Limitations.** The statutes of limitations for the causes of  
 22 action pled herein vary. The limitations period is four years for claims brought  
 23 under the UCL, which is one year longer than the statutes of limitations under the  
 24 FAL and CLRA. In addition, the statutes of limitations vary for certain states'  
 25 laws for breach of warranty and unjust enrichment/restitution, between  
 26 approximately 2 to 6 years. Thus, California Subclass members who purchased  
 27 the Products more than 3 years prior to the filing of the complaint will be barred  
 28 from recovery if equitable relief were not permitted under the UCL. Similarly,

1 Nationwide Class members who purchased the Products prior to the furthest  
2 reach-back under the statute of limitations for breach of warranty, will be barred  
3 from recovery if equitable relief were not permitted for restitution/unjust  
4 enrichment.

5 b. **Broader Scope of Conduct.** In addition, the scope of actionable misconduct  
6 under the unfair prong of the UCL is broader than the other causes of action  
7 asserted herein. It includes, for example, Defendants' overall unfair marketing  
8 scheme to promote and brand the Products with the Challenged Representation,  
9 across a multitude of media platforms, including the Products' labels and  
10 packaging, over a long period of time, in order to gain an unfair advantage over  
11 competitor products and to take advantage of consumers' desire for products that  
12 comport with the Challenged Representation. The UCL also creates a cause of  
13 action for violations of law (such as statutory or regulatory requirements related  
14 to representations and omissions made on the type of products at issue). Thus,  
15 Plaintiff and Class members may be entitled to restitution under the UCL, while  
16 not entitled to damages under other causes of action asserted herein (e.g., the FAL  
17 requires actual or constructive knowledge of the falsity; the CLRA is limited to  
18 certain types of plaintiffs (an individual who seeks or acquires, by purchase or  
19 lease, any goods or services for personal, family, or household purposes) and other  
20 statutorily enumerated conduct). Similarly, unjust enrichment/restitution is  
21 broader than breach of warranty. For example, in some states, breach of warranty  
22 may require privity of contract or pre-lawsuit notice, which are not typically  
23 required to establish unjust enrichment/restitution. Thus, Plaintiff and Class  
24 members may be entitled to recover under unjust enrichment/restitution, while not  
25 entitled to damages under breach of warranty, because they purchased the  
26 products from third-party retailers or provide adequate pre-lawsuit notice prior to  
27 the commencement of this action.

28 c. **Injunctive Relief to Cease Misconduct and Dispel Misperception.** Injunctive

1 relief is appropriate on behalf of Plaintiff and members of the Class because  
 2 Defendants continue to misrepresent the Products with the Challenged  
 3 Representation. Injunctive relief is necessary to prevent Defendants from  
 4 continuing to engage in the unfair, fraudulent, and/or unlawful conduct described  
 5 herein and to prevent future harm—none of which can be achieved through  
 6 available legal remedies (such as monetary damages to compensate past harm).  
 7 Further, injunctive relief, in the form of affirmative disclosures is necessary to  
 8 dispel the public misperception about the Products that has resulted from years of  
 9 Defendants’ unfair, fraudulent, and unlawful marketing efforts. Such disclosures  
 10 would include, but are not limited to, publicly disseminated statements that the  
 11 Products Challenged Representation is not true and providing accurate  
 12 information about the Products’ true nature; and/or requiring prominent  
 13 qualifications and/or disclaimers on the Products’ front label concerning the  
 14 Products’ true nature. An injunction requiring affirmative disclosures to dispel  
 15 the public’s misperception, and prevent the ongoing deception and repeat  
 16 purchases based thereon, is also not available through a legal remedy (such as  
 17 monetary damages). In addition, Plaintiff is unable at present to accurately  
 18 quantify the damages caused by Defendants’ future harm, rendering injunctive  
 19 relief all the more necessary. For example, because the court has not yet certified  
 20 any class, the following remains unknown: the scope of the class, the identities of  
 21 its members, their respective purchasing practices, prices of future Product sales,  
 22 and quantities of future Product sales.

23 d. **Public Injunction.** Further, because a “public injunction” is available under the  
 24 UCL, damages will not adequately “benefit the general public” in a manner  
 25 equivalent to an injunction.

26 e. **California vs. Nationwide Class Claims.** Violation of the UCL, FAL, and CLRA  
 27 are claims asserted on behalf of Plaintiff and the California Subclass against non-  
 28 California Defendants, while breach of warranty and unjust enrichment/restitution

are asserted on behalf of Plaintiff and the Nationwide Class. Dismissal of farther-reaching claims would bar recovery for non-California members of the Class.

f. **Procedural Posture—Incomplete Discovery & Pre-Certification.** Lastly, this is the first pleading in this action and discovery has not yet commenced and/or is at its initial stages. No class has been certified yet. The completion of fact/non-expert and expert discovery, as well as the certification of this case as a class action, are necessary to finalize and determine all available and unavailable remedies, including legal and equitable, for Plaintiff(s)'s individual claims and any certified class or subclass. Plaintiff(s) therefore reserve their right to amend this complaint and/or assert additional facts that demonstrate this Court's jurisdiction to order equitable remedies where no adequate legal remedies exist for either Plaintiff and/or any certified class or subclass. Such proof, to the extent necessary, will be presented prior to the trial of any equitable claims for relief and/or the entry of an order granting equitable relief.

### **CLASS ACTION ALLEGATIONS**

37. **Class Definition.** Plaintiff brings this action as a class action pursuant to Federal Rules of Civil Procedure 23(b)(2) and 23(b)(3) on behalf of herself and all others similarly situated, and as members of the Classes defined as follows:

All residents of the United States who, within the applicable statute of limitations periods, purchased the Products for purposes other than resale ("**Nationwide Class**"); and

All residents of California who, within four years prior to the filing of this Complaint, purchased the Products for purposes other than resale ("**California Subclass**").

("Nationwide Class" and "California Subclass," collectively, "**Class**").

38. **Class Definition Exclusions.** Excluded from the Class are: (i) Defendant, its assigns, successors, and legal representatives; (ii) any entities in which Defendant has controlling interests; (iii) federal, state, and/or local governments, including, but not limited to, their departments, agencies, divisions, bureaus, boards, sections, groups, counsels, and/or subdivisions; and (iv) any

1 judicial officer presiding over this matter and person within the third degree of consanguinity to  
2 such judicial officer.

3 39. **Reservation of Rights to Amend the Class Definition.** Plaintiff reserves the right to  
4 amend or otherwise alter the class definition presented to the Court at the appropriate time in  
5 response to facts learned through discovery, legal arguments advanced by Defendant, or otherwise.

6 40. **Numerosity:** Members of the Class are so numerous that joinder of all members is  
7 impracticable. Upon information and belief, the Nationwide Class consists of tens of thousands of  
8 purchasers (if not more) dispersed throughout the United States, and the California Subclass  
9 likewise consists of thousands of purchasers (if not more) dispersed throughout the State of  
10 California. Accordingly, it would be impracticable to join all members of the Class before the Court.

11 41. **Common Questions Predominate:** There are numerous and substantial questions of  
12 law or fact common to all members of the Class that predominate over any individual issues.  
13 Included within the common questions of law or fact are:

- 14 a. Whether Defendant engaged in unlawful, unfair or deceptive business practices by  
15 advertising and selling the Products;
- 16 b. Whether Defendant's conduct of advertising and selling the Products as containing  
17 only reef friendly ingredients when they do not constitutes an unfair method of  
18 competition, or unfair or deceptive act or practice, in violation of Civil Code section  
19 1750, *et seq.*;
- 20 c. Whether Defendant used deceptive representations in connection with the sale of the  
21 Products in violation of Civil Code section 1750, *et seq.*;
- 22 d. Whether Defendant represented that the Products have characteristics or quantities  
23 that they do not have in violation of Civil Code section 1750, *et seq.*;
- 24 e. Whether Defendant advertised the Products with intent not to sell them as advertised  
25 in violation of Civil Code section 1750, *et seq.*;
- 26 f. Whether Defendant's labeling and advertising of the Products are untrue or  
27 misleading in violation of Business and Professions Code section 17500, *et seq.*;
- 28 g. Whether Defendant knew or by the exercise of reasonable care should have known its  
labeling and advertising was and is untrue or misleading in violation of Business and  
Professions Code section 17500, *et seq.*;
- h. Whether Defendant's conduct is an unfair business practice within the meaning of  
Business and Professions Code section 17200, *et seq.*;
- i. Whether Defendant's conduct is a fraudulent business practice within the meaning of  
Business and Professions Code section 17200, *et seq.*;

- j. Whether Defendant's conduct is an unlawful business practice within the meaning of Business and Professions Code section 17200, *et seq.*;
- k. Whether Plaintiff and the Class paid more money for the Products than they actually received;
- l. How much more money Plaintiff and the Class paid for the Products than they actually received;
- m. Whether Defendant's conduct constitutes breach of warranty;
- n. Whether Plaintiff and the Class are entitled to injunctive relief; and
- o. Whether Defendant was unjustly enriched by their unlawful conduct.

42. **Typicality:** Plaintiff's claims are typical of the claims of the Class Members she seeks to represent because Plaintiff, like the Class Members, purchased Defendant's misleading and deceptive Products. Defendant's unlawful, unfair and/or fraudulent actions concern the same business practices described herein irrespective of where they occurred or were experienced. Plaintiff and the Class sustained similar injuries arising out of Defendant's conduct. Plaintiff's and Class Members' claims arise from the same practices and course of conduct and are based on the same legal theories.

43. **Adequacy:** Plaintiff is an adequate representative of the Class he seeks to represent because his interests do not conflict with the interests of the Class Members Plaintiff seeks to represent. Plaintiff will fairly and adequately protect Class Members' interests and has retained counsel experienced and competent in the prosecution of complex class actions, including complex questions that arise in consumer protection litigation.

44. **Superiority and Substantial Benefit:** A class action is superior to other methods for the fair and efficient adjudication of this controversy, since individual joinder of all members of the Class is impracticable and no other group method of adjudication of all claims asserted herein is more efficient and manageable for at least the following reasons:

- a. The claims presented in this case predominate over any questions of law or fact, if any exist at all, affecting any individual member of the Class;
- b. Absent a Class, the members of the Class will continue to suffer damage and Defendant's unlawful conduct will continue without remedy while Defendant profits from and enjoy its ill-gotten gains;

- c. Given the size of individual Class Members' claims, few, if any, Class Members could afford to or would seek legal redress individually for the wrongs Defendant committed against them, and absent Class Members have no substantial interest in individually controlling the prosecution of individual actions;
- d. When the liability of Defendant has been adjudicated, claims of all members of the Class can be administered efficiently and/or determined uniformly by the Court; and
- e. This action presents no difficulty that would impede its management by the Court as a class action, which is the best available means by which Plaintiff and Class Members can seek redress for the harm caused to them by Defendant.

45. **Inconsistent Rulings.** Because Plaintiff seeks relief for all members of the Class, the prosecution of separate actions by individual members would create a risk of inconsistent or varying adjudications with respect to individual members of the Class, which would establish incompatible standards of conduct for Defendant.

46. **Injunctive/Equitable Relief.** The prerequisites to maintaining a class action for injunctive or equitable relief pursuant to Fed. R. Civ. P. 23(b)(2) are met as Defendant has acted or refused to act on grounds generally applicable to the Class, thereby making appropriate final injunctive or equitable relief with respect to the Class as a whole.

47. **Manageability.** Plaintiff and Plaintiff's counsel are unaware of any difficulties that are likely to be encountered in the management of this action that would preclude its maintenance as a class action.

### **COUNT ONE**

#### **Violation of California Unfair Competition Law**

**(Cal. Bus. & Prof. Code §§ 17200, *et seq.*)**

***(On Behalf of the California Subclass)***

48. **Incorporation by Reference.** Plaintiff re-alleges and incorporates by reference all allegations contained in this complaint, as though fully set forth herein.

49. **California Subclass.** This cause of action is brought pursuant to Business and Professions Code Section 17200, *et seq.*, on behalf of Plaintiff and a California Subclass who purchased the Products within the applicable statute of limitations.

50. **The UCL.** California Business & Professions Code, sections 17200, *et seq.* (the



1 “UCL”) prohibits unfair competition and provides, in pertinent part, that “unfair competition shall  
2 mean and include unlawful, unfair or fraudulent business practices and unfair, deceptive, untrue or  
3 misleading advertising.”

4 51. **False Advertising Claims.** Defendant, in its advertising and packaging of the  
5 Products, made false and misleading statements and fraudulent omissions regarding the quality and  
6 characteristics of the Products—specifically, the Reef Friendly Representation—despite the fact the  
7 Products contain chemical ingredients that can harm and/or kill coral reefs. Such claims and  
8 omissions appear on the label and packaging of the Products, which are sold at retail stores and  
9 point-of-purchase displays.

10 52. **Defendant’s Deliberately False and Fraudulent Marketing Scheme.** Defendant  
11 does not have any reasonable basis for the claims about the Products made in Defendant’s  
12 advertising and on Defendant’s packaging or labeling because the Products contain ingredients that  
13 can cause harm and/or kill coral reefs. Defendant knew and knows that the Products are not truly  
14 reef friendly sunscreens, though Defendant intentionally advertised and marketed the Products to  
15 deceive reasonable consumers into believing that Products contain only ingredients that are safe for  
16 coral reefs.

17 53. **False Advertising Claims Cause Purchase of Products.** Defendant’s labeling and  
18 advertising of the Products led to, and continues to lead to, reasonable consumers, including  
19 Plaintiff, believing that the Products are truly reef friendly and do not harm and/or kill coral reefs.

20 54. **Injury in Fact.** Plaintiff and the California Subclass have suffered injury in fact and  
21 have lost money or property as a result of and in reliance upon Defendant’s False Advertising  
22 Claims—namely Plaintiff and the California Subclass lost the purchase price for the Products they  
23 bought from the Defendant.

24 55. **Conduct Violates the UCL.** Defendant’s conduct, as alleged herein, constitutes  
25 unfair, unlawful, and fraudulent business practices pursuant to the UCL. The UCL prohibits unfair  
26 competition and provides, in pertinent part, that “unfair competition shall mean and include  
27 unlawful, unfair or fraudulent business practices and unfair, deceptive, untrue or misleading  
28 advertising.” Cal. Bus & Prof. Code § 17200. In addition, Defendant’s use of various forms of



1 advertising media to advertise, call attention to, or give publicity to the sale of goods or merchandise  
2 that are not as represented in any manner constitutes unfair competition, unfair, deceptive, untrue  
3 or misleading advertising, and an unlawful business practice within the meaning of Business and  
4 Professions Code Sections 17200 and 17531, which advertisements have deceived and are likely to  
5 deceive the consuming public, in violation of Business and Professions Code Section 17200.

6       **56. No Reasonably Available Alternatives/Legitimate Business Interests.** Defendant  
7 failed to avail themselves of reasonably available, lawful alternatives to further their legitimate  
8 business interests.

9       **57. Business Practice.** All of the conduct alleged herein occurred and continues to occur  
10 in Defendant's business. Defendant's wrongful conduct is part of a pattern, practice and/or  
11 generalized course of conduct, which will continue on a daily basis until Defendant voluntarily  
12 alters its conduct or Defendant is otherwise ordered to do so.

13       **58. Injunction.** Pursuant to Business and Professions Code Sections 17203 and 17535,  
14 Plaintiff and the members of the California Subclass seek an order of this Court enjoining Defendant  
15 from continuing to engage, use, or employ its practice of labeling and advertising the sale and use  
16 of the Products. Likewise, Plaintiff and the members of the California Subclass seek an order  
17 requiring Defendant to disclose such misrepresentations, and to preclude Defendant's failure to  
18 disclose the existence and significance of said misrepresentations.

19       **59. Causation/Damages.** As a direct and proximate result of Defendant's misconduct in  
20 violation of the UCL, Plaintiff and members of the California Subclass were harmed in the amount  
21 of the purchase price they paid for the Products. Further, Plaintiff and members of the California  
22 Subclass have suffered and continue to suffer economic losses and other damages including, but  
23 not limited to, the amounts paid for the Products, and any interest that would have accrued on those  
24 monies, in an amount to be proven at trial. Accordingly, Plaintiff seeks a monetary award for  
25 violation of the UCL in damages, restitution, and/or disgorgement of ill-gotten gains to compensate  
26 Plaintiff and the California Subclass for said monies, as well as injunctive relief to enjoin  
27 Defendant's misconduct to prevent ongoing and future harm that will result.

28       **60. Punitive Damages.** Plaintiff seeks punitive damages pursuant to this cause of action

for violation of the UCL on behalf of Plaintiff and the California Subclass. Defendant's unfair, fraudulent, and unlawful conduct described herein constitutes malicious, oppressive, and/or fraudulent conduct warranting an award of punitive damages as permitted by law. Defendant's misconduct is malicious as Defendant acted with the intent to cause Plaintiff and consumers to pay for Products that they were not, in fact, receiving. Defendant willfully and knowingly disregarded the rights of Plaintiff and consumers as Defendant was, at all times, aware of the probable dangerous consequences of its conduct and deliberately failed to avoid misleading consumers, including Plaintiff. Defendant's misconduct is oppressive as, at all relevant times, said conduct was so vile, base, and/or contemptible that reasonable people would look down upon it and/or otherwise would despise such corporate misconduct. Said misconduct subjected Plaintiff and consumers to cruel and unjust hardship in knowing disregard of their rights. Defendant's misconduct is fraudulent as Defendant intentionally misrepresented and/or concealed material facts with the intent to deceive Plaintiff and consumers. The wrongful conduct constituting malice, oppression, and/or fraud was committed, authorized, adopted, approved, and/or ratified by officers, directors, and/or managing agents of Defendant.

#### A. "Unfair" Prong

61. **Unfair Standard.** Under the UCL, a challenged activity is "unfair" when "any injury it causes outweighs any benefits provided to consumers and the injury is one that the consumers themselves could not reasonably avoid." *Camacho v. Auto Club of Southern California*, 142 Cal. App. 4th 1394, 1403 (2006).

62. **Injury.** Defendant's action of mislabeling the Products with the Challenged Representation does not confer any benefit to consumers; rather, doing so causes injuries to consumers, who do not receive products commensurate with their reasonable expectations, overpay for the Products, and receive Products of lesser standards than what they reasonably expected to receive. Consumers cannot avoid any of the injuries caused by Defendant's deceptive labeling and advertising of the Products. Accordingly, the injuries caused by Defendant's deceptive labeling and advertising outweigh any benefits.

63. **Balancing Test.** Some courts conduct a balancing test to decide if a challenged

activity amounts to unfair conduct under California Business and Professions Code Section 17200. They “weigh the utility of the defendant’s conduct against the gravity of the harm to the alleged victim.” *Davis v. HSBC Bank Nevada, N.A.*, 691 F.3d 1152, 1169 (9th Cir. 2012).

64. **No Utility.** Here, Defendant’s conduct of labeling the Products with the Reef Friendly Representation when the Products contain harmful chemical ingredients that harm and/or kill coral reefs has no utility and financially harms purchasers. Thus, the utility of Defendant’s conduct is vastly outweighed by the gravity of harm.

65. **Legislative Declared Policy.** Some courts require that “unfairness must be tethered to some legislative declared policy or proof of some actual or threatened impact on competition.” *Lozano v. AT&T Wireless Servs. Inc.*, 504 F. 3d 718, 735 (9th Cir. 2007).

66. **Unfair Conduct.** Defendant’s labeling and advertising of the Products, as alleged herein, is false, deceptive, misleading, and unreasonable, and constitutes unfair conduct. Defendant knew or should have known of its unfair conduct. Defendant’s misrepresentations constitute an unfair business practice within the meaning of California Business and Professions Code Section 17200.

67. **Reasonably Available Alternatives.** There existed reasonably available alternatives to further Defendant’s legitimate business interests, other than the conduct described herein. Defendant could have refrained from labeling the Products with the Reef Friendly Representation.

68. **Defendant’s Wrongful Conduct.** All of the conduct alleged herein occurs and continues to occur in Defendant’s business. Defendant’s wrongful conduct is part of a pattern or generalized course of conduct repeated on thousands of occasions daily.

69. **Injunction.** Pursuant to Business and Professions Code Sections 17203, Plaintiff and the California Subclass seek an order of this Court enjoining Defendant from continuing to engage, use, or employ its practices of labeling the Products with the Reef Friendly Representation.

70. **Causation/Damages.** Plaintiff and the California Subclass have suffered injury in fact and have lost money as a result of Defendant’s unfair conduct. Plaintiff and the California Subclass paid an unwarranted premium for these Products. Specifically, Plaintiff and the California Subclass paid for Products that contain chemical active ingredients. Plaintiff and the California Subclass

1 would not have purchased the Products, or would have paid substantially less for the Products, if  
2 they had known that the Products' advertising and labeling were deceptive. Accordingly, Plaintiff  
3 seeks damages, restitution and/or disgorgement of ill-gotten gains pursuant to the UCL.

4 **B. "Fraudulent" Prong**

5 71. **Fraud Standard.** The UCL considers conduct fraudulent (and prohibits said conduct)  
6 if it is likely to deceive members of the public. *Bank of the West v. Superior Court*, 2 Cal. 4th 1254,  
7 1267 (1992).

8 72. **Fraudulent & Material Challenged Representations.** Defendant used the Reef  
9 Friendly Representation with the intent to sell the Products to consumers, including Plaintiff and  
10 the California Subclass. The Challenged Representation is false and Defendant knew or should have  
11 known of its falsity. The Challenged Representation is likely to deceive consumers into purchasing  
12 the Products because they are material to the average, ordinary, and reasonable consumer.

13 73. **Fraudulent Business Practice.** As alleged herein, the misrepresentations by  
14 Defendant constitute a fraudulent business practice in violation of California Business &  
15 Professions Code Section 17200.

16 74. **Reasonable and Detrimental Reliance.** Plaintiff and the California Subclass  
17 reasonably and detrimentally relied on the material and false Challenged Representation to their  
18 detriment in that they purchased the Products.

19 75. **Reasonably Available Alternatives.** Defendant had reasonably available alternatives  
20 to further its legitimate business interests, other than the conduct described herein. Defendant could  
21 have refrained from labeling the Products with the Reef Friendly Representation.

22 76. **Business Practice.** All of the conduct alleged herein occurs and continues to occur in  
23 Defendant's business. Defendant's wrongful conduct is part of a pattern or generalized course of  
24 conduct.

25 77. **Injunction.** Pursuant to Business and Professions Code Sections 17203, Plaintiff and  
26 the California Subclass seek an order of this Court enjoining Defendant from continuing to engage,  
27 use, or employ its practice of labeling the Products with the Reef Friendly Representation.

28 78. **Causation/Damages.** Plaintiff and the California Subclass have suffered injury in fact

1 and have lost money as a result of Defendant's fraudulent conduct. Plaintiff paid an unwarranted  
 2 premium for the Products. Specifically, Plaintiff and the California Subclass paid for products that  
 3 they believed contained only ingredients that are safe for coral reefs, when, in fact, the Products  
 4 contained harmful chemical ingredients that can harm and/or kill coral reefs. Plaintiff and the  
 5 California Subclass would not have purchased the Products if they had known the truth.  
 6 Accordingly, Plaintiff seeks damages, restitution, and/or disgorgement of ill-gotten gains pursuant  
 7 to the UCL.

### 8 C. "Unlawful" Prong

9 79. **Unlawful Standard.** The UCL identifies violations of other laws as "unlawful  
 10 practices that the unfair competition law makes independently actionable." *Velazquez v. GMAC*  
 11 *Mortg. Corp.*, 605 F. Supp. 2d 1049, 1068 (C.D. Cal. 2008).

12 80. **Violations of CLRA and FAL.** Defendant's labeling of the Products, as alleged  
 13 herein, violates California Civil Code sections 1750, *et seq.* (the "CLRA") and California Business  
 14 and Professions Code sections 17500, *et seq.* (the "FAL") as set forth below in the sections  
 15 regarding those causes of action.

16 81. **Additional Violations.** Defendant's conduct in making the false representations  
 17 described herein constitutes a knowing failure to adopt policies in accordance with and/or adherence  
 18 to applicable laws, as set forth herein, all of which are binding upon and burdensome to their  
 19 competitors. This conduct engenders an unfair competitive advantage for Defendant, thereby  
 20 constituting an unfair, fraudulent and/or unlawful business practice under California Business &  
 21 Professions Code sections 17200-17208. Additionally, Defendant's misrepresentations of material  
 22 facts, as set forth herein, violate California Civil Code sections 1572, 1573, 1709, 1710, 1711, and  
 23 1770, as well as the common law.

24 82. **Unlawful Conduct.** Defendant's packaging, labeling, and advertising of the Products,  
 25 as alleged herein, are false, deceptive, misleading, and unreasonable, and constitute unlawful  
 26 conduct. Defendant knew or should have known of its unlawful conduct.

27 83. **Reasonably Available Alternatives.** Defendant had reasonably available alternatives  
 28 to further its legitimate business interests, other than the conduct described herein. Defendant could

1 have refrained from labeling the Products with the Reef Friendly Representation.

2 84. **Business Practice.** All of the conduct alleged herein occurs and continues to occur in  
3 Defendant's business. Defendant's wrongful conduct is part of a pattern or generalized course of  
4 conduct.

5 85. **Injunction.** Pursuant to Business and Professions Code Section 17203, Plaintiff and  
6 the California Subclass seek an order of this Court enjoining Defendant from continuing to engage,  
7 use, or employ its practice of false and deceptive advertising of the Products.

8 86. **Causation/Damages.** Plaintiff and the California Subclass have suffered injury in fact  
9 and have lost money as a result of Defendant's unlawful conduct. Plaintiff and the California  
10 Subclass paid an unwarranted premium for the Products. Plaintiff and the California Subclass would  
11 not have purchased the Products if they had known that Defendant's purposely deceived consumers  
12 into believing that the Products are truly safe for coral reefs. Accordingly, Plaintiff seeks damages,  
13 restitution and/or disgorgement of ill-gotten gains pursuant to the UCL.

## 14 **COUNT TWO**

### 15 **Violation of California False Advertising Law**

16 **(Cal. Bus. & Prof. Code §§ 17500, *et seq.*)**

17 ***(On Behalf of the California Subclass)***

18 87. **Incorporation by reference.** Plaintiff re-alleges and incorporates by reference all  
19 allegations contained in this complaint, as though fully set forth herein.

20 88. **California Subclass.** Plaintiff brings this claim individually and on behalf of the  
21 California Subclass who purchased the Products within the applicable statute of limitations.

22 89. **FAL Standard.** The False Advertising Law, codified at Cal. Bus. & Prof. Code  
23 section 17500, *et seq.*, prohibits "unfair, deceptive, untrue or misleading advertising[.]"

24 90. **False & Material Challenged Representations Disseminated to Public.** Defendant  
25 violated section 17500 when it advertised and marketed the Products through the unfair, deceptive,  
26 untrue, and misleading Reef Friendly Representation disseminated to the public through the  
27 Products' labeling, packaging and advertising. These representations were false because the  
28 Products do not conform to them. The representations were material because they are likely to

mislead a reasonable consumer into purchasing the Products.

91. **Knowledge.** In making and disseminating the representations alleged herein, Defendant knew or should have known that the representations were untrue or misleading, and acted in violation of § 17500.

92. **Intent to sell.** Defendant's Challenged Representation was specifically designed to induce reasonable consumers, like Plaintiff and the California Subclass, to purchase the Products.

93. **Causation/Damages.** As a direct and proximate result of Defendant's misconduct in violation of the FAL, Plaintiff and members of the California Subclass were harmed in the amount of the purchase price they paid for the Products. Further, Plaintiff and members of the Class have suffered and continue to suffer economic losses and other damages including, but not limited to, the amounts paid for the Products, and any interest that would have accrued on those monies, in an amount to be proven at trial. Accordingly, Plaintiff seeks a monetary award for violation of the FAL in damages, restitution, and/or disgorgement of ill-gotten gains to compensate Plaintiff and the California Subclass for said monies, as well as injunctive relief to enjoin Defendant's misconduct to prevent ongoing and future harm that will result.

94. **Punitive Damages.** Defendant's unfair, fraudulent, and unlawful conduct described herein constitutes malicious, oppressive, and/or fraudulent conduct warranting an award of punitive damages as permitted by law. Defendant's misconduct is malicious as Defendant acted with the intent to cause Plaintiff and consumers to pay for Products that they were not, in fact, receiving. Defendant willfully and knowingly disregarded the rights of Plaintiff and consumers as Defendant was aware of the probable dangerous consequences of its conduct and deliberately failed to avoid misleading consumers, including Plaintiff. Defendant's misconduct is oppressive as, at all relevant times, said conduct was so vile, base, and/or contemptible that reasonable people would look down upon it and/or otherwise would despise such corporate misconduct. Said misconduct subjected Plaintiff and consumers to cruel and unjust hardship in knowing disregard of their rights. Defendant's misconduct is fraudulent as Defendant, at all relevant times, intentionally misrepresented and/or concealed material facts with the intent to deceive Plaintiff and consumers. The wrongful conduct constituting malice, oppression, and/or fraud was committed,



1 authorized, adopted, approved, and/or ratified by officers, directors, and/or managing agents of  
2 Defendant.

### 3 **COUNT THREE**

#### 4 **Violation of California Consumers Legal Remedies Act**

5 **(Cal. Civ. Code §§ 1750, *et seq.*)**

6 **(*On Behalf of the California Subclass*)**

7 95. **Incorporation by Reference.** Plaintiff re-alleges and incorporates by reference all  
8 allegations contained in this complaint, as though fully set forth herein.

9 96. **California Subclass.** Plaintiff brings this claim individually and on behalf of the  
10 California Subclass who purchased the Products within the applicable statute of limitations.

11 97. **CLRA Standard.** The CLRA provides that “unfair methods of competition and unfair  
12 or deceptive acts or practices undertaken by any person in a transaction intended to result or which  
13 results in the sale or lease of goods or services to any consumer are unlawful.”

14 98. **Goods/Services.** The Products are “goods,” as defined by the CLRA in California  
15 Civil Code §1761(a).

16 99. **Defendant.** Defendant is a “person,” as defined by the CLRA in California Civil Code  
17 §1761(c).

18 100. **Consumers.** Plaintiff and members of the California Subclass are “consumers,” as  
19 defined by the CLRA in California Civil Code §1761(d).

20 101. **Transactions.** The purchase of the Products by Plaintiff and members of the  
21 California Subclass are “transactions” as defined by the CLRA under California Civil Code section  
22 1761(e).

23 102. **Violations of the CLRA.** Defendant violated the following sections of the CLRA by  
24 selling the Products to Plaintiff and the California Subclass through the false, misleading, deceptive,  
25 and fraudulent Challenged Representation:

26 a. Section 1770(a)(5) by representing that the Products have “characteristics, . . . uses  
27 [or] benefits . . . which [they] do not have.”

28 b. Section 1770(a)(7) by representing that the Products “are of a particular standard,



1 quality, or grade . . . [when] they are of another.”

2 c. Section 1770(a)(9) by advertising the Products “with [the] intent not to sell them as  
3 advertised.”

4 103. **Knowledge.** Defendant’s uniform and material representations and omissions  
5 regarding the Products were likely to deceive, and Defendant knew or should have known that its  
6 representations and omissions were untrue and misleading.

7 104. **Malicious.** Defendant’s conduct is malicious, fraudulent, and wanton in that  
8 Defendant intentionally misled and withheld material information from consumers, including  
9 Plaintiff, to increase the sale of the Products.

10 105. **Plaintiff Could Not Have Avoided Injury.** Plaintiff and members of the California  
11 Subclass could not have reasonably avoided such injury. Plaintiff and members of the California  
12 Subclass were unaware of the existence of the facts that Defendant suppressed and failed to disclose,  
13 and Plaintiff and members of the California Subclass would not have purchased the Products and/or  
14 would have purchased them on different terms had they known the truth.

15 106. **Causation/Reliance/Materiality.** Plaintiff and the California Subclass suffered harm  
16 as a result of Defendant’s violations of the CLRA because they relied on the Challenged  
17 Representation in deciding to purchase the Products. The Challenged Representation was a  
18 substantial factor. The Challenged Representation was material because a reasonable consumer  
19 would consider it important in deciding whether to purchase the Products.

20 107. **Section 1782 – Prelitigation Demand/Notice.** Pursuant to California Civil Code  
21 section 1782, more than thirty days prior to the filing of this complaint, on July 28, 2021, Plaintiff’s  
22 counsel, acting on behalf of Plaintiff and members of the Class, mailed a notice via U.S. certified  
23 mail, return receipt requested, to Defendant at its principal places of business and care of its agent  
24 for service of process registered with the California Secretary of State (Edgewell Personal Care  
25 Brands, LLC, 6 Research Drive, Shelton, CT 06484; Edgewell Personal Care Brands, LLC, 1350  
26 Timberlake Manor Pkwy., Ste. 300, Chesterfield, MO 63017; Corporate Creations Network Inc.,  
27 801 US highway 1, North Palm Beach, FL 33408) regarding Defendant’s particular violations of  
28 the California Consumers Legal Remedies Act, as set forth above, and demanding that Defendant

1 correct and otherwise rectify those violations with respect to Plaintiff and all members of the Class.  
2 The form, content, and delivery of the notice satisfy subsections (1) and (2) of section 1782(a). The  
3 notice of violations and demand for remedial action, as of the filing of this complaint, did not result  
4 in adequate correction, repair, replacement, and/or other remedy by Defendants, including all  
5 remedial action set forth in the notice letter and as set forth under section 1782(c).

6 108. **Causation/Damages.** As a direct and proximate result of Defendant's misconduct in  
7 violation of the CLRA, Plaintiff and members of the California Subclass were harmed in the amount  
8 of the purchase price they paid for the Products. Further, Plaintiff and members of the Class have  
9 suffered and continue to suffer economic losses and other damages including, but not limited to,  
10 the amounts paid for the Products, and any interest that would have accrued on those monies, in an  
11 amount to be proven at trial. Accordingly, Plaintiff seeks a monetary award for violation of this Act  
12 in the form of damages, restitution, disgorgement of ill-gotten gains to compensate Plaintiff and the  
13 California Subclass for said monies.

14 109. **Injunction.** Given that Defendant's conduct violated California Civil Code section  
15 1780, Plaintiff and members of the California Subclass are entitled to seek, and do hereby seek,  
16 injunctive relief to put an end to Defendant's violations of the CLRA. Plaintiff has no adequate  
17 remedy at law. Without equitable relief, Defendant's unfair and deceptive practices will continue to  
18 harm Plaintiff and the California Subclass.

19 110. **Punitive Damages.** Defendant's unfair, fraudulent, and unlawful conduct described  
20 herein constitutes malicious, oppressive, and/or fraudulent conduct warranting an award of punitive  
21 damages as permitted by law. Defendant's misconduct is malicious as Defendant acted with the  
22 intent to cause Plaintiff and consumers to pay for Products that they were not, in fact, receiving.  
23 Defendant willfully and knowingly disregarded the rights of Plaintiff and consumers as Defendant  
24 was, at all times, aware of the probable dangerous consequences of its conduct and deliberately  
25 failed to avoid misleading consumers, including Plaintiff. Defendant's misconduct is oppressive as,  
26 at all relevant times, said conduct was so vile, base, and/or contemptible that reasonable people  
27 would look down upon it and/or otherwise would despise such corporate misconduct. Said  
28 misconduct subjected Plaintiff and consumers to cruel and unjust hardship in knowing disregard of

1 their rights. Defendant's misconduct is fraudulent as Defendant, at all relevant times, intentionally  
 2 misrepresented and/or concealed material facts with the intent to deceive Plaintiff and consumers.  
 3 The wrongful conduct constituting malice, oppression, and/or fraud was committed, authorized,  
 4 adopted, approved, and/or ratified by officers, directors, and/or managing agents of Defendant.

#### 5 **COUNT FOUR**

#### 6 **Breach of Warranty**

#### 7 ***(On Behalf of the Nationwide Class and California Subclass)***

8 111. **Incorporation by Reference.** Plaintiff re-alleges and incorporates by reference all  
 9 allegations contained in this complaint, as though fully set forth herein.

10 112. **Nationwide Class & California Subclass.** Plaintiff brings this claim individually and  
 11 on behalf of the Nationwide Class and California Subclass (the Class) who purchased the Products  
 12 within the applicable statute of limitations.

13 113. **Express Warranty.** By advertising and selling the Products at issue, Defendant made  
 14 promises and affirmations of fact on the Products' packaging and labeling, and through its marketing  
 15 and advertising, as described herein. This labeling and advertising constitute express warranties and  
 16 became part of the basis of the bargain between Plaintiff and members of the Class and Defendant.  
 17 Defendant purports, through the Products' labeling and advertising, to create express warranties that  
 18 the Products, among other things, conform to the Challenged Representations.

19 114. **Implied Warranty of Merchantability.** By advertising and selling the Products at  
 20 issue, Defendant, a merchant of goods, made promises and affirmations of fact that the Products are  
 21 merchantable and conform to the promises or affirmations of fact made on the Products' packaging  
 22 and labeling, and through its marketing and advertising, as described herein. This labeling and  
 23 advertising, combined with the implied warranty of merchantability, constitute warranties that  
 24 became part of the basis of the bargain between Plaintiff and members of the Class and Defendant--  
 25 --to wit, that the Products, among other things, conform to the Challenged Representations.

26 115. **Breach of Warranty.** Contrary to Defendant's warranties, the Products do not  
 27 conform to the Challenged Representations and, therefore, Defendant breached its warranties about  
 28 the Products and their qualities.

116. **Causation/Remedies.** As a direct and proximate result of Defendant's breach of warranty, Plaintiff and members of the Class were harmed in the amount of the purchase price they paid for the Products. Further, Plaintiff and members of the Class have suffered and continue to suffer economic losses and other damages including, but not limited to, the amounts paid for the Products, and any interest that would have accrued on those monies, in an amount to be proven at trial. Accordingly, Plaintiff seeks a monetary award for breach of warranty in the form of damages, restitution, and/or disgorgement of ill-gotten gains to compensate Plaintiff and the Class for said monies, as well as injunctive relief to enjoin Defendant's misconduct to prevent ongoing and future harm that will result.

117. **Punitive Damages.** Plaintiff seeks punitive damages pursuant to this cause of action for breach of warranty on behalf of Plaintiff and the Class. Defendant's unfair, fraudulent, and unlawful conduct described herein constitutes malicious, oppressive, and/or fraudulent conduct warranting an award of punitive damages as permitted by law. Defendant's misconduct is malicious as Defendant acted with the intent to cause Plaintiff and consumers to pay for Products that they were not, in fact, receiving. Defendant willfully and knowingly disregarded the rights of Plaintiff and consumers as Defendant was aware of the probable dangerous consequences of its conduct and deliberately failed to avoid misleading consumers, including Plaintiff. Defendant's misconduct is oppressive as, at all relevant times, said conduct was so vile, base, and/or contemptible that reasonable people would look down upon it and/or otherwise would despise such misconduct. Said misconduct subjected Plaintiff and consumers to cruel and unjust hardship in knowing disregard of their rights. Defendant's misconduct is fraudulent as Defendant, at all relevant times, intentionally misrepresented and/or concealed material facts with the intent to deceive Plaintiff and consumers. The wrongful conduct constituting malice, oppression, and/or fraud was committed, authorized, adopted, approved, and/or ratified by officers, directors, and/or managing agents of Defendant.

### **COUNT FIVE**

#### **Unjust Enrichment/Restitution**

#### ***(On Behalf of the Nationwide Class and California Subclass)***

118. **Incorporation by Reference.** Plaintiff re-alleges and incorporates by reference all

1 allegations contained in this complaint, as though fully set forth herein.

2       **119. Nationwide Class & California Subclass.** Plaintiff brings this claim individually and  
3 on behalf of the Nationwide Class and California Subclass (the Class) who purchased the Products  
4 within the applicable statute of limitations.

5       **120. Plaintiff/Class Conferred a Benefit.** By purchasing the Products, Plaintiff and  
6 members of the Class conferred a benefit on Defendant in the form of the purchase price of the  
7 Products.

8       **121. Defendant's Knowledge of Conferred Benefit.** Defendant had knowledge of such  
9 benefit and Defendant appreciated the benefit because, were consumers not to purchase the  
10 Products, Defendant would not generate revenue from the sales of the Products.

11       **122. Defendant's Unjust Receipt Through Deception.** Defendant's knowing acceptance  
12 and retention of the benefit is inequitable and unjust because the benefit was obtained by  
13 Defendant's fraudulent, misleading, and deceptive representations and omissions.

14       **123. Causation/Damages.** As a direct and proximate result of Defendant's unjust  
15 enrichment, Plaintiff and members of the Class were harmed in the amount of the purchase price  
16 they paid for the Products. Further, Plaintiff and members of the Class have suffered and continue  
17 to suffer economic losses and other damages including, but not limited to, the amounts paid for the  
18 Products, and any interest that would have accrued on those monies, in an amount to be proven at  
19 trial. Accordingly, Plaintiff seeks a monetary award for unjust enrichment in damages, restitution,  
20 and/or disgorgement of ill-gotten gains to compensate Plaintiff and the Class for said monies, as  
21 well as injunctive relief to enjoin Defendant's misconduct to prevent ongoing and future harm that  
22 will result.

23       **124. Punitive Damages.** Plaintiff seeks punitive damages pursuant to this cause of action  
24 for unjust enrichment on behalf of Plaintiff and the Class. Defendant's unfair, fraudulent, and  
25 unlawful conduct described herein constitutes malicious, oppressive, and/or fraudulent conduct  
26 warranting an award of punitive damages as permitted by law. Defendant's misconduct is malicious  
27 as Defendant acted with the intent to cause Plaintiff and consumers to pay for Products that they  
28 were not, in fact, receiving. Defendant willfully and knowingly disregarded the rights of Plaintiff

and consumers as Defendant was aware of the probable dangerous consequences of its conduct and deliberately failed to avoid misleading consumers, including Plaintiff. Defendant's misconduct is oppressive as, at all relevant times, said conduct was so vile, base, and/or contemptible that reasonable people would look down upon it and/or otherwise would despise such corporate misconduct. Said misconduct subjected Plaintiff and consumers to cruel and unjust hardship in knowing disregard of their rights. Defendant's misconduct is fraudulent as Defendant, at all relevant times, intentionally misrepresented and/or concealed material facts with the intent to deceive Plaintiff and consumers. The wrongful conduct constituting malice, oppression, and/or fraud was committed, authorized, adopted, approved, and/or ratified by officers, directors, and/or managing agents of Defendant.

### **PRAYER FOR RELIEF**

125. WHEREFORE, Plaintiff, individually and on behalf of all others similarly situated, prays for judgment against Defendant as follows:

- a. **Certification:** For an order certifying this action as a class action, appointing Plaintiff as the Class Representative, and appointing Plaintiff's Counsel as Class Counsel;
- b. **Declaratory Relief:** For an order declaring that Defendant's conduct violates the statutes and laws referenced herein;
- c. **Injunction:** For an order requiring Defendant to immediately cease and desist from selling the unlawful Products in violation of law; enjoining Defendant from continuing to market, advertise, distribute, and sell the Products in the unlawful manner described herein; requiring Defendant to engage in an affirmative advertising campaign to dispel the public misperception of the Products resulting from Defendant's unlawful conduct; and requiring all further and just corrective action;
- d. **Damages/Restitution/Disgorgement:** For an order awarding monetary compensation in the form of damages, restitution, and/or disgorgement to Plaintiff and the Class;
- e. **Punitive Damages:** For an order awarding punitive damages;
- f. **Attorneys' Fees & Costs:** For an order awarding attorneys' fees and costs;
- g. **Pre/Post-Judgment Interest:** For an order awarding pre-judgment and post-judgment interest; and
- h. **All Just & Proper Relief:** For such other and further relief as the Court deems just and proper.

1 Dated: September 30, 2021

Respectfully submitted,

2 **CLARKSON LAW FIRM, P.C.**

3 By:

4 /s/ Katherine Bruce

RYAN J. CLARKSON

SHIREEN M. CLARKSON

KATHERINE A. BRUCE

KELSEY J. ELLING

*Attorneys for Plaintiff*

CLARKSON LAW FIRM, P.C.  
22525 Pacific Coast Highway  
Malibu, CA 90265

**DEMAND FOR JURY TRIAL**

Plaintiff hereby demands a trial by jury on all issues and causes of action so triable.

Dated: September 30, 2021

Respectfully submitted,

**CLARKSON LAW FIRM**

By:

/s/ Katherine Bruce

RYAN J. CLARKSON

SHIREEN M. CLARKSON

KATHERINE A. BRUCE

KELSEY J. ELLING

*Attorneys for Plaintiff*

CLARKSON LAW FIRM, P.C.  
22525 Pacific Coast Highway  
Malibu, CA 90265